

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|   |   |                             |
|---|---|-----------------------------|
| <b>In the Matter of</b>                           | ) |                             |
|   | ) |                             |
| <b>Provision of Directory Listing Information</b> | ) | <b>CC Docket No. 99-273</b> |
| <b>Under the Telecommunications Act of 1934</b>   | ) |                             |
| <b>As Amended</b>                                 | ) |                             |

**Comments of Cincinnati Bell Telephone Company**

Douglas E. Hart  
FROST & JACOBS LLP  
2500 PNC Center  
Cincinnati, OH 45202  
(513) 651-6800

Attorney for Cincinnati Bell  
Telephone Company

October 13, 1999

## TABLE OF CONTENTS

|  |           |
|--|-----------|
| <b>SUMMARY.....</b>  | <b>i</b>  |
| <b>I. INTRODUCTION.....</b>  | <b>1</b>  |
| <b>II. INTERNET DIRECTORIES CONSTITUTE A PUBLICATION FORMAT<br/>PURSUANT TO §222(e) .....</b>                    | <b>2</b>  |
| <b>III. INTERNET DIRECTORIES DO NOT CONSTITUTE DIRECTORY ASSISTANCE<br/>WITHIN THE SCOPE OF §251(b)(3) .....</b> | <b>5</b>  |
| <b>IV. ORAL PROVISION OF LISTING INFORMATION IS NOT WITHIN THE SCOPE<br/>OF §222(e) .....</b>                    | <b>7</b>  |
| <b>V. SECTIONS 222(e) AND 251(b)(3) SHOULD REMAIN SEPARATE .....</b>   | <b>8</b>  |
| <b>VI. NONCARRIER DIRECTORY ASSISTANCE PROVIDERS .....</b>   | <b>11</b> |
| <b>VII. ACCESS TO NON-LOCAL LISTINGS .....</b>   | <b>13</b> |
| <b>VIII. CONCLUSION.....</b>   | <b>14</b> |

## SUMMARY

In response to the Commission's request for comments concerning the convergence of directory publishing and directory assistance, Cincinnati Bell Telephone ("CBT") submits that Internet directories are properly classified as directory publishing pursuant to §222(e) of the Act. In accordance with that section, directory publishers are entitled to obtain subscriber list information for the purpose of providing Internet directory databases to the public. Directory assistance providers, however, are not entitled to obtain subscriber list information per §222(e); oral provision of subscriber list information by directory assistance providers to individual customers does not constitute directory publication "in any format" under §222(e). Directory assistance providers who are also providers of telephone exchange and telephone toll service are entitled to nondiscriminatory access to directory assistance in accordance with §251(b)(3). Non-carriers are not entitled to a LEC's directory assistance database under §251(b)(3) nor are they entitled to listing information under §§201 and 202.

Because LECs maintain independent databases for the provision of subscriber list information to directory publishers under §222(e) and directory assistance information to competing carriers under §251(b)(3), LECs are entitled to recover the costs of creating and maintaining these independent databases. If parties are permitted to use the information contained in the directory publishing database to provide directory assistance (and vice versa), LECs will be unable to recover their costs. The Commission should not disrupt the statutory scheme designed by Congress by expanding access to either of these databases to unintended recipients. Congress clearly intended to limit the availability of subscriber list information and directory assistance under the terms of §§222(e) and 251(b)(3) respectively. Moreover, LECs should not be required to provide nondiscriminatory access under §251(b)(3) to nonlocal listings that are obtained from third parties.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|   |   |                             |
|---|---|-----------------------------|
| <b>In the Matter of</b>                           | ) |                             |
|   | ) |                             |
| <b>Provision of Directory Listing Information</b> | ) | <b>CC Docket No. 99-273</b> |
| <b>Under the Telecommunications Act of 1934</b>   | ) |                             |
| <b>As Amended</b>                                 | ) |                             |

**Comments of Cincinnati Bell Telephone Company**

These comments are submitted on behalf of Cincinnati Bell Telephone Company ("CBT") in response to the Commission's September 9, 1999 Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION**

This NPRM seeks comment on a variety of issues related to the availability of subscriber list information and the convergence of directory publishing and directory assistance on the Internet. Specifically, the Commission seeks to determine whether Internet directories are properly classified as directory publications pursuant to §222(e) or whether the directories constitute directory assistance pursuant to §251(b)(3). The Commission also seeks comment on whether its determination of this issue should affect the availability and price of subscriber list information and directory assistance to various parties under either §222(e) or §251(b)(3).

---

<sup>1</sup> Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, CC Docket No. 99-273, Notice of Proposed Rulemaking, FCC 99-227, released September 9, 1999. ("NPRM")

## **II. INTERNET DIRECTORIES CONSTITUTE A PUBLICATION FORMAT PURSUANT TO §222(e)**

Section 222(e) of the Act requires local exchange carriers (“LECs”) to provide subscriber list information “to any person upon request for the purpose of publishing directories in any format.”<sup>2</sup> The Commission seeks comment on whether the language of §222(e) encompasses the use of subscriber list information in Internet databases and whether directory publishers are entitled to obtain subscriber list information pursuant to §222(e) for use in Internet databases. The Commission also asks whether a determination that the use of subscriber list information in Internet databases amounts to directory publishing is consistent with the legislative history and policy objectives of the 1996 Act.<sup>3</sup>

CBT does not believe that the medium used (e.g., printed directory or Internet) is controlling as to whether §222(e) applies. Rather, the operative term is “publishing directories,” which should be contrasted with “directory assistance.” The term “directory” refers to a published work containing the names and telephone numbers of telephone subscribers who choose to allow their listings to be published, that one may use to find a listing. “Directory assistance,” on the other hand, connotes a service whereby the provider offers its assistance to a caller who seeks a particular listing.

CBT submits that the phrase “directories in any format” in §222(e) includes the publication of subscriber list information in an Internet database for several reasons. First, Internet databases are a format or method by which publishers can make subscriber list information available to the general public. Second, nothing in language of §222(e) or other

---

<sup>2</sup> 47 U.S.C. §222(e).

<sup>3</sup> NPRM at ¶173.

sections of the Act indicate that Congress intended to exclude electronic formats, including Internet databases, from the types of publication methods available for use by directory publishers. Third, Internet databases closely resemble traditional forms of directory publication in both content and the manner in which they are used. For example, both traditional directories and Internet databases provide subscriber list information, i.e. name, address, and phone number, to any member of the public who has access to the directory. The information is also retrieved similarly in that a user of either a traditional directory or Internet database must “look up” the telephone number of a person or business.<sup>4</sup> Thus, as with a traditional paper directory, a person must have access to something other than his or her phone to utilize the Internet database and obtain the desired information, i.e. access to a computer and the Internet. Given these reasons, it is reasonable to conclude that §222(e) includes Internet databases as one of a variety of publication methods available to directory publishers. Moreover, provision of subscriber list information pursuant to §222(e) is consistent with the broad policy of the Act to expand the choices available to customers for communications-related services such as directories.

If the Commission determines that Internet databases are within the scope of §222(e), the Commission must also conclude that anyone who makes subscriber list information available to the public via Internet databases is entitled to obtain subscriber list information pursuant to §222(e). An Internet directory publisher is therefore entitled to protection against discrimination in accordance with §222(e) as articulated in the Commission's recently released Third Report and Order in CC Docket No. 96-115.<sup>5</sup> There, the Commission states that each directory publisher is

---

<sup>4</sup> Id. at ¶171.

<sup>5</sup> Telecommunications Carriers' Use of Customer Propriety Network Information and Other Customer Information CC Docket No. 96-115, Third Report and Order, FCC 99-227, released September 9, 1999. (“Third Report and Order”)

entitled to obtain subscriber list information at the same rates, terms, and conditions that the carrier provides the information to its own directory publishing operation, its directory publishing affiliate, or another directory publisher.<sup>6</sup>

In light of the nondiscrimination requirement in §222(e), the Commission asks whether a carrier should be precluded from imposing rates, terms, and conditions for subscriber list information obtained to publish Internet directories that are different from the rates, terms, and conditions imposed by the carrier for subscriber list information used to publish other directories.<sup>7</sup> CBT currently charges the same rates for the provision of subscriber list information to all directory publishers, including Internet directory publishers. As the Commission notes at ¶177, however, CBT has a condition on the use of subscriber list information imposed on all directory publishers who provide subscriber list information through Internet databases.<sup>8</sup> Specifically, CBT requires Internet directory publishers to limit the number of listings that can be viewed and downloaded by a third party with a single command. While CBT does not place similar conditions on the use of subscriber list information in traditional directory publications, CBT believes that this policy is reasonable and necessary to protect the company's interest in its subscriber list information in the Internet context.

In the Third Report and Order, the Commission recognized that legislative history identifies carriers' interest in obtaining fair compensation for their subscriber list information.<sup>9</sup> CBT maintains that it will not receive fair compensation for its subscriber list information if an

---

<sup>6</sup> Id. at ¶58.

<sup>7</sup> NPRM at ¶176.

<sup>8</sup> This condition is imposed on all Internet directory publishers, including CBT's directory affiliate Cincinnati Bell Directory, and is therefore nondiscriminatory with regard to this class of publishers.

Internet directory can be easily downloaded and resold by anyone with access to the Internet. CBT, therefore, has a legitimate interest in preventing, to the extent possible, an end user from downloading and reselling subscriber list information which has not been purchased from CBT in accordance with §222(e). CBT submits that its policy of limiting the number of listings per screen is designed to inhibit third party attempts to download subscriber list information; it is not designed nor does it substantially serve to restrict the use of subscriber list information by a directory publisher. In light of the company's interest in obtaining a fair compensation for and protecting against unlawful resale of subscriber list information, the condition on the use of subscriber list information in an Internet database is reasonable. Moreover, such a policy benefits the interests of any publisher who pays for the use of subscriber list information. In fact, it is difficult to imagine why a publisher who pays a carrier for subscriber list information would not want to prevent others from obtaining the same information for free.

### **III. INTERNET DIRECTORIES DO NOT CONSTITUTE DIRECTORY ASSISTANCE WITHIN THE SCOPE OF §251(b)(3)**

The Commission seeks comment on whether the provision of access to an Internet directory constitutes the provision of directory assistance within the meaning of §251(b)(3).<sup>10</sup> CBT submits that the answer is no.

First, as discussed in II. above, the provision of subscriber list information via an Internet directory is a publication format within the scope of §222(e). Second, an Internet directory does not meet the definition of “directory assistance service” as defined by the Commission. According to the Commission, directory assistance service includes “making available to

---

<sup>9</sup> Third Report and Order, *supra* at fn. 5, at ¶84.

<sup>10</sup> *Id.* at ¶178.



customers, upon request, information contained in directory listings.”<sup>11</sup> Traditionally, a customer obtains directory assistance by calling the directory assistance operator, telling the operator the location and name of a person or business, and requesting the phone number of the person or business he or she wishes to know. The directory assistance operator then searches the directory assistance database for the subscriber list information associated with the person or business requested and provides the number, if published, to the caller. As described, the directory assistance provider performs the database search at the direct request of the caller. The provider of an Internet database, on the other hand, does not perform any search function for the user and has no contact with the user of its database. Instead, an Internet directory publisher simply makes its database available to members of the public who must search the database to obtain information for themselves, much as they would search a traditional paper directory. Because there is no interaction between the user and publisher of an Internet database, an Internet publisher can not be said to provide information “upon request” of the customer. The provider of an Internet database is not, therefore, a directory assistance provider within the scope of §251(b)(3).

In ¶179, the Commission asks whether directory publishing under §222(e) and directory assistance under §251(b)(3) are mutually exclusive categories. CBT believes that they are. An Internet directory provider is not engaged in both directory publishing under §222(e) and directory assistance under §251(b)(3) in making subscriber list information available to customers by means of the Internet. As described above, there is an inherent difference, interaction or lack thereof, between the provision of subscriber list information through

---

<sup>11</sup> Id., citing Local Competition Order, 11 FCC at 16198.

directories, either paper or Internet, and the provision of directory assistance such that these terms are mutually exclusive.

#### **IV. ORAL PROVISION OF LISTING INFORMATION IS NOT WITHIN THE SCOPE OF §222(e)**

At ¶180, the Commission seeks comment on whether the phrase "for the publication of directories in any format" in §222(e) includes oral provision of listing information by a directory assistance provider. The Commission also asks whether a determination that oral dissemination of subscriber list information is within the scope of §222(e) is consistent the legislative history, statutory scheme, and policy objectives of the 1996 Act.

CBT submits that the phrase "publishing directories in any format" in §222(e) does not include oral provision of subscriber list information by directory assistance providers. Directory assistance does not amount to "oral publication" of subscriber list information because a directory assistance provider does not actually "publish" subscriber list information when it makes that information known to an individual caller. According to the Merriam-Webster Dictionary, the verb "to publish" is defined as "to make generally known; announce publicly; to produce or release literature, information, [etc.]...for sale to the public."<sup>12</sup> In accordance with this definition, a traditional directory publication is widely distributed and made available to the public. Oral provision of listing information to an individual caller, on the other hand, does not meet this definition because it lacks the quality of being made known or announced to the public. The oral provision of subscriber list information is also contrary to the common use of "publish," a term generally used to refer to some form of visual representation, such as printed books, magazines, and other writings or documents.

---

<sup>12</sup> The Merriam-Webster Dictionary, Home and Office Edition (1998).

A conclusion that the phrase “in any format” as used in §222(e) encompasses oral conveyance of subscriber list information by directory assistance providers is inconsistent with the legislative intent. Congress enacted two sections in the Act--§222(e) to enable competing directory publishers to obtain subscriber list information and §251(b)(3) to enable competing carriers to obtain access to directory assistance. Although Internet directories are relatively new and their classification as either directory publishing or directory assistance may be debatable, the same cannot be said of "oral publication" of subscriber list information by directory assistance. Not only is it true that oral publication does not come within the plain meaning of the phrase "in any format," but Congress clearly provided for the provision of listing information to directory assistance providers in another section of the Act. Given that Congress ensured that competing carriers would have access to the information in §251(b)(3), there is no reason to conclude that they also meant to ensure its availability to directory assistance providers under §222(e).

#### **V. SECTIONS 222(e) AND 251(b)(3) SHOULD REMAIN SEPARATE**

Assuming a directory assistance provider is entitled to subscriber list information pursuant to §222(e), the Commission asks whether a carrier's rates, terms, and conditions for subscriber list information provided to directory assistance providers pursuant to §222(e) must be identical to the rates, terms, and conditions under which the carrier provides nondiscriminatory access to listing information to competing carriers pursuant to §251(b)(3).<sup>13</sup> At ¶188, the NPRM again poses this question. There, the Commission further asks whether its decisions regarding Internet databases and “oral publication” should affect the rates under §222(e) or §251(b)(3). CBT maintains that the rates, terms, and conditions under §222(e) and §251(b)(3) should not be

required to be identical. The rates, terms, and conditions by which information is available under either section should remain independent of the other.

Although the information contained in the directory publishing and directory assistance databases begins with the same raw customer data, i.e. the customer service order, the information is processed differently and maintained in separate databases. In fact, the information produced by one database is actually different in content from that produced by the other database. For example, the subscriber list information provided to directory publishers does not contain the names and numbers of subscribers choosing unpublished service; the directory assistance database, however, contains the names but not the numbers of these subscribers. Thus, the information produced by the separate databases is not interchangeable. There are also separate processes for making the information contained in each database available to either directory publishers pursuant to §222(e) or other carriers pursuant to §251(b)(3). With regard to the latter, there is value added to the provision of the directory assistance databases, e.g. format, access, delivery, etc., to which only carriers are entitled per §251(b)(3). LECs which must provide subscriber list information to both publishers and other carriers are entitled to recover the costs of creating and maintaining these independent databases and processes. Given the distinct characteristics of the separate databases, the Commission should not require carriers to provide the information contained in the two databases at identical rates, terms, and conditions.

Because of the databases are created and maintained independently, the costs associated with each database are also independent and should be considered separately. CBT's has approached the pricing of these databases by identifying those costs that are attributable to each

---

<sup>13</sup> NPRM at ¶181.

database individually and those costs that are attributable to both databases jointly. The costs are then allocated accordingly: the directory publishing database bears half of the joint costs, plus all of the costs associated with creating only the directory publishing database, while the directory assistance database bears half of the joint costs, plus all of the costs of the separate directory assistance processes. Pricing for the separate databases is also affected by the projected demand for each particular database. If demand is different for directory publishing data and directory listing data, the prices for the two databases will differ, even if they are equal in cost. Thus, the price at which one database is offered should have no effect on the price at which the other is offered. Moreover, the Commission should consider that while it determines the appropriate rates for the provision of subscriber list information under §222(e), state commissions determine the rates under §251(b)(3).

CBT submits that use of subscriber list information is limited to publishing under §222(e). Likewise, use of listing information obtained under §251(b)(3) is limited to use by directory assistance as that section does not authorize its use for any other purpose. If publishers purchasing subscriber listings for production of directories were able to use the same information to provide directory assistance service and vice versa, the LEC would be unable to recover the costs attributable to producing the individual databases. CBT believes the better approach is to maintain the separateness of these two products. Because there are different cost components associated with producing each of the databases, LECs should be able to impose different rates, terms, and conditions for the provision of information contained in each database. Moreover, CBT does not have the same amount of investment in each product. Thus, neither the competing publisher nor directory assistance provider should receive the right to use the data for both

purposes without bearing a share of the total cost of producing the database, not only the portion attributed to the separate database.

## **VI. NONCARRIER DIRECTORY ASSISTANCE PROVIDERS**

CBT agrees with the Commission's tentative conclusion that a non-carrier directory assistance provider does not fall within the class of entities entitled to nondiscriminatory access to directory assistance under §251(b)(3).<sup>14</sup> CBT does not believe that §217 provides any basis for a non-carrier directory assistance provider to obtain data pursuant to §251(b)(3). That section provides that an act of an agent of a carrier is deemed to be the act of the carrier principal, but in no way does §217 confer upon the agent the rights that the carrier may possess. Such an interpretation would turn agency law on its head. CBT submits that a carrier may obtain data pursuant to §251(b)(3) for purposes of providing directory assistance and employ an agent to perform that service for it. However, the agent could only possess the data in its capacity as the agent of the carrier and its usage of the data would be limited to acting for the carrier. There is no independent right of the agent to use the data for its own separate purposes. Thus, if a non-carrier directory assistance provider obtains access to directory assistance as an agent to a principal carrier, the non-carrier can not misappropriate that information to serve its own customers or the customers of another carrier. The non-carrier directory assistance provider can only use the access it has gained as an agent to serve the customers of the carrier principal.

The Commission also questions whether a non-carrier directory assistance provider who offers customers call completion services becomes a provider of telephone exchange or

---

<sup>14</sup> NPRM at ¶184.

telephone toll service so that the non-carrier becomes entitled to nondiscriminatory access to directory assistance pursuant to §251(b)(3).<sup>15</sup> A non-carrier directory service provider does not become a telecommunications carrier by virtue of providing call completion services. The non-carrier directory assistance provider does not actually transmit a call over the network. Instead, the directory assistance provider merely directs the call to either a local exchange or toll provider that will actually carry traffic from the caller to the call recipient. Thus, a non-carrier directory assistance provider does not provide “telecommunications service” as defined by the Act when it offers call completion services. A non-carrier directory assistance provider is, therefore, not entitled to nondiscriminatory access to directory assistance pursuant to §251(b)(3). If the Commission concludes, however, that a non-carrier directory assistance provider becomes a telephone exchange or telephone toll provider by virtue of offering call completion services, the directory assistance provider must meet the regulatory requirements imposed upon all telecommunications carriers by the Act.

In ¶190, the Commission requests comment on whether it should require LECs to provide access to directory assistance to non-carrier directory assistance providers pursuant to §§201 and 202 of the Act. The rates, terms, and conditions under which a LEC provides access to directory assistance are not “charges, practices, classifications, and regulations for and in connection with [interstate communication by wire or radio]” within the meaning of §201(b) or “charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service” within the meaning of § 202(a). Because LEC

---

<sup>15</sup> NPRM at ¶185.

provision of subscriber listing data is not a “communications service,” §§201 and 202 are not applicable to this subject.

In ¶191, the Commission seeks comment on whether a LEC's refusal to provide access to directory assistance to a non-carrier directory assistance provider constitutes a “charge, practice, classification, or regulation that is unjust or unreasonable” within the meaning of §201(b) or “unjust or unreasonable discrimination” within the meaning of §202(a). Refusal to provide directory assistance to a non-carrier is not unjust or unreasonable, nor does it constitute unjust or unreasonable discrimination. The Act only authorizes access to directory assistance in order to provide telephone exchange service and telephone toll service. Unless a provider is a carrier providing such services, it has no entitlement to the data.

## **VII. ACCESS TO NON-LOCAL LISTINGS**

In ¶193, the Commission seeks comment on whether all LECs providing national directory assistance must provide nondiscriminatory access to nonlocal directory assistance data pursuant to §251(b)(3). The definition of “subscriber list information” is limited to information regarding the subscribers of that carrier. As the Commission correctly noted, local directory assistance data is generated from LEC customer service orders. Listings pertaining to customers of other carriers in other jurisdictions is not “subscriber list information” subject to the statute. Nonlocal data must be obtained, even by LECs, from third parties from whom competitors may also obtain the data. A LEC cannot exercise control over such nonlocal data. Competitors have the same, if not a better, opportunity to obtain nonlocal data from the nonlocal carrier source, particularly where the carrier seeking the listings is providing telephone service in such other area and the ILEC is not.



Nonlocal directory assistance data is not the property of the ILEC. Just as the Commission did not require ILECs to provide competing carriers with directory listing information the ILECs receive from other competing carriers in the local market,<sup>16</sup> it should not require the ILEC to turn over data it has independently obtained from carriers or other sources in distant markets.

## **VIII. CONCLUSION**

Congress enacted two sections of the Act to govern the availability of subscriber list information and directory assistance. Section 222(e) requires LECs to provide subscriber list information to competing directory publishers. Directory publishers are entitled to obtain the information for the sole purpose of publishing directories and may not use subscriber list information for any other purpose, including the provision directory assistance. Internet databases are properly classified as directory publishing pursuant to §222(e). Because they are not an interactive service between the customer and provider, Internet databases do not constitute the provision of directory assistance and are, therefore, not within the scope of §251(b)(3). That section governs the availability of directory assistance to competing providers of telephone exchange and telephone toll service. Such carriers are not authorized under §251(b)(3) to use information contained in the directory assistance database for purposes other than to provide directory assistance. As clearly indicated by the language of the separate sections, Congress did not intend to provide parties who are neither competing publishers nor carriers access to the information contained in the directory publishing and directory assistance databases respectively. Thus, despite any perceived convergence of directory publishing and directory assistance on the Internet, the Commission should not alter the statutory scheme set forth in the 1996 Act.

---

<sup>16</sup> Third Report and Order ¶54.

Respectfully submitted,

/s/ Douglas E. Hart  
Douglas E. Hart  
FROST & JACOBS LLP  
2500 PNC Center  
Cincinnati, OH 45202  
(513) 651-6800

Attorney for Cincinnati Bell  
Telephone Company

October 13, 1999